Editor's note: appealed - remanded for determination of factual issue, Civ.No. 81-0322-S (S.D.Cal. Apr. 28, 1982); Decision reaffirmed on judicial remand by order dated Feb. 9, 1983 -- See 52 IBLA 277A th C below.

PEARL C. BARNETT

IBLA 80-950 Decided February 6, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claim null and void. CA 2918

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

   Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

   Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1976, or on or before Dec. 30 of the calendar year following the calendar year of recording the notice of location, whichever date is sooner, evidence of annual assessment work or a notice of intention to hold the claim.

3. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

4. Administrative Procedure: Hearings--Constitutional Law: Due Process--Rules of Practice: Hearings

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final. APPEARANCES:

APPEARANCES: Edward E. Marsh, Jr., Esq., Marsh, Graves, Fischbeck & Welch, El Cajon, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Pearl C. Barnett appeals from a decision dated August 15, 1980, by the California State Office, Bureau of Land Management (BLM), declaring the Dos Cabezas limestone placer mining claim null and void.

The claim is situated in the NE 1/4 sec. 27, T. 16 S., R. 8 E., San Bernardino meridian, San Diego County, California, and was located July 1, 1924, and amended July 1, 1935. On May 5, 1974, appellant filed an application for patent to the mining claim, CA 2918, in the California State Office. By decision dated September 30, 1976, BLM declared the application for mineral patent a nullity because of alleged procedural irregularities, including a defect in the certificate of title. That decision was not appealed. Appellant avers that she filed another application for patent on June 10, 1977, and that despite several inquiries she received no word on the status of the latter application until December 1979.

In a letter dated March 4, 1980, BLM advised appellant that the California State Office had no record of having received her amended application for patent or letters of inquiry thereto. BLM suggested that appellant had used an incorrect address since her mail had been directed to a former address of the Riverside District Office, rather than the current address of the California State Office, in Sacramento, California. BLM asked appellant to furnish a copy of the canceled

check allegedly remitted for the service fee with the amended application, but appellant made no response to this request. Finally, BLM advised that there was no evidence that the claim had been recorded in compliance with the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

The decision appealed from herein states in part:

> The application [for patent] was considered as pending on October 21, 1976, the date of passage of [FLPMA], because the period covering the right of the claimant to appeal [the decision rejecting the application] had not expired. The documents and information required under 43 CFR 3833.1-2 in compliance with the Act were on file in this office on October 21, 1976, and accordingly the claim was considered to be recorded under the regulations in 43 CFR 3833.1-3, as of that date.
>
> Evidence of assessment work or notice of intention to hold the claim was not filed in this office by December 30, 1977, as required under 43 CFR 3833.2-1.

The decision also mentioned that a portion of the claimed lands had been patented to the State of California in 1944.

In her statement of reasons appellant asserts that she was never requested by BLM to file proofs of labor and that such proofs were filed for the years after 1975 in the San Diego County Recorder's Office. Appellant asserts that the decision deprives her of property, without due process of law. She contends that her application for patent substantially complies with the filing requirements of FLPMA and the regulations. She also argues that, as her claim was located in 1935, she had "valid existing rights" which remain unaffected by the State's patent.

[1, 2] BLM's action declaring the claim void was based on 43 CFR 3833.2-1(a) which states:

> The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The decision indicates that the year of recording was 1976. Therefore, under the above regulation, the last date on which evidence of assessment work or a notice of intention to hold the claim could have been filed was December 30, 1977. Appellant's application for patent does not obviate the need to comply with the statutory and regulatory requirements as to assessment work. For owners of unpatented mining claims those regulations are mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner. John Walter Chaney, 46 IBLA 229 (1980); 43 CFR 3833.4.

At the outset, we find that BLM erred in its interpretation of 43 CFR 3833.1-3, as it was initially issued effective January 20, 1977, and governed the actions then taken by BLM. The regulation stated that

> If the owner of an unpatented mining claim or mill site had on file in the proper BLM office on October 21, 1976, an application for a mineral patent which complies with 43 CFR Part 3860, except the requirements for publication and payment of purchase price (43 CFR 3862.4), or if the owner of an unpatented mining claim or mill site located on or before October 21, 1976, shall file in the proper BLM office an application for a mineral patent, as described above, before October 22, 1979, the filing of the application will be deemed full compliance with the recordation requirements of section 314 of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.1.

Appellant's application for a mineral patent to the Dos Cabezas claim did not comply with the requirements of 43 CFR Part 3860, so that it was improper for BLM to consider the faulty patent application as adequate to satisfy the recording requirements of FLPMA. Properly, BLM should have declared the Dos Cabezas limestone placer mining claim null and void because no copy of the official record of the location notice had been filed on or before October 22, 1979, as required by 43 CFR 3833.1-2, and similarly, no proof of assessment work had been filed by the same date, as required by 43 CFR 3833.2-1.

[3] It is unfortunate that appellant was not aware of the filing requirements of FLPMA. However, all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Willene Minnier, 45 IBLA 1 (1980). It is regrettable that BLM did not volunteer information regarding the FLPMA recording requirements in its earlier correspondence with appellant's counsel, but the onus must fall on appellant for having attempted to deal with other than the correct BLM office, and then by correspondence sent to an incorrect address.

[4] Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial BLM decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirement. George H. Fennimore, 50 IBLA 280 (1980); State of Alaska, 46 IBLA 12 (1980).

Since appellant's mining claim is null and void for failure to comply with the recordation requirements of FLPMA, we need not address the issue of the effect of the State's patent and appellant's asserted prior existing rights.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Douglas E. Henriques
Administrative Judge

WE concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

February 9, 1983

IBLA 80-950	:	CA 2918
52 IBLA 273 (1891)	:	
	:	Mineral Patent Application
PEARL C. BARNETT	:	
	:	Decision Reaffirmed

ORDER

By decision Pearl C. Barnett, 52 IBLA 273 (1981), this Board Affirmed a decision of the California State Office, Bureau of Land Management (BLM), which had declared the unpatented Dos Cabezas placer mining claim abandoned and void for failure to file the documents required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Barnett had alleged that she filed an amended application for mineral patent in June 1977, following a BLM decision of September 30, 1976, which declared her application for mineral patent, CA 2918, to be a nullity because of procedural irregularities, but BLM reported it had no record of receipt of such an amended application.

Following judicial review of the Board's decision in Barnett v. Watt, Civ. No. 81-0322 S (I), the United States District Court for the Southern District of California, by Order of April 28, 1982, remanded the case to the Department of the Interior for further proceedings to determine whether BLM had received any notice of Barnett's second application for mineral patent prior to October 22, 1979.

A response to an Order of this Board that Barnett present evidence to show that the California State Office, BLM, in Sacramento, did, in fact, receive the letter of June 10, 1977, from counsel for Barnett which allegedly accompanied a new application for mineral patent, was received from Barnett's counsel, as well as a reply from the Department's Regional Solicitor. The Order contained a caveat that if counsel for Barnett did not submit acceptable evidence that the California State Office din receive the application of Barnett in 1977 for mineral patent, the Board would reaffirm its earlier decision that the Dos Cabezas placer mining claim is abandoned and void pursuant to section 314 of FLPMA.

Counsel for Barnett stated as follows:

> The original application for patent was filed on May 5, 1975. The filing fee in the amount of $25.00 was paid.

> It was not until September 30, 1976, that said application was rejected. In that rejection decision, Mr. Walter F. Holmes, Chief of the Branch of Lands and Mineral Operations stated that "Applicant may file a new application and may incorporated any of the content of this record by reference". Mr. Holmes did not request a new filing fee and no request was ever made at any time for further filing fees despite numerous letters and correspondence between the Applicant and BLM. It would seem to this Applicant that the filing fee as originally made would therefor be sufficient for any new application or amendment to the old application. This is particularly true because of the fact that the same file number was used throughout.
>
> All fairness and equity demands that the Dos Cabezas Claim has not been abandoned and should not be made void.

It is to be noted from the copies of the letters adverted to by counsel that each was addressed to the BLM District Office in Riverside, California, an not to the State Office in Sacramento. Furthermore, the street address shown on the copies of the letters furnished by counsel was not the correct address for the District Office in Riverside.

The Office of the Regional Solicitor responded as follows:

> By order, dated August 10, 1982, the applicant was granted 30 days in which "to show that BLM, in fact, received his letter of June 10, 1977, or to produce a receipt for the service charge for the alleged filing of a mineral patent application in 1977." The Applicant's responsive pleading does not show that the BLM, in fact, received her attorney's June 10, 1977 letter and admits that she did not pay a mineral patent application service charge in 1977 because Mr. Holmes of the BLM did not tell her so and/or because her alleged 1977 patent application was simply an amendment to her 1975 application. The first argument to tally ignores the fact that 43 CFR 3862.1-2 (formally 43 CFR 3450.2) requires a mineral patent applicant to pay the BLM $25.00 at the time of filing for filing and acting upon mineral patent application. The second argument totally ignores the fact that the BLM's September 30, 1976, Decision signed by Mr. Holmes specifically states that "(t)he applicant may file a new application (emphasis added), not an amendment to her 1975 application which was declared to be a nullity in an earlier part of that Decision.
>
> In light of the Applicant's failure to show that her alleged 1977 mineral patent application was, in fact, received by the BLM, it is requested that this Board affirm its earlier Decision in Pearl C. Barnett, 52 IBLA 273 (1981).

It is obvious that counsel for Barnett has not responded to the Board's Order in a satisfactory manner. He has not presented any acceptable evidence that the BLM State Office in Sacramento did, in fact, ever receive a new application for a mineral patent to the Dos Cabezas

placer mining claim in June 1977, or at any other time. As the Order of August 10, 1982, indicated, failure to submit acceptable evidence that a new patent application was filed with the BLM State Office in Sacramento, would compel the Board to reaffirm its earlier decision that the Dos Cabezas placer mining claim is considered abandoned and void pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744 (c) 1976.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the holding in Pearl C. Barnett, 52 IBLA 237 (1981), that the Dos Cabezas placer mining claim is abandoned and void is reaffirmed.

_____
Douglas E. Henriques
Administrative Judge

We concur:

_____
Bruce R. Harris
Administrative Judge

_____
Anne Poindexter Lewis
Administrative Judge

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